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Attorneys for Defendant  
HARTFORD CASUALTY INSURANCE COMPANY

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

ROMAN KOROLEV,

Plaintiffs,

vs.

HARTFORD CASUALTY  
INSURANCE COMPANY and DOES  
1 through 50, inclusive,

Defendants.

CV 08

3809

NOTICE OF REMOVAL OF CIVIL  
ACTION UNDER 28 U.S.C. § 1441(b)

DATE ACTION FILED: 7/14/2008  
TRIAL DATE: Not Set

TO THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION:

Defendant Hartford Casualty Insurance Company (hereinafter "Hartford")  
hereby removes to this Court pursuant to 28 U.S.C. section 1441(b), the state court  
action described below.

1. On July 14, 2008, Plaintiff Roman Korolev filed an action in the  
Superior Court of the State of California in and for the County of Marin, entitled  
*Korolev v. Hartford Casualty Insurance Company*, Case No. CV 083419. A copy  
of the following pleadings in the action and other documents are attached hereto:

Exhibit A, 7/14/2008 Complaint

Exhibit B, 7/14/2008 Summons

Exhibit C, 7/14/2008 Notice of Case Management Conference

Exhibit D, 8/8/2008 Answer to Complaint

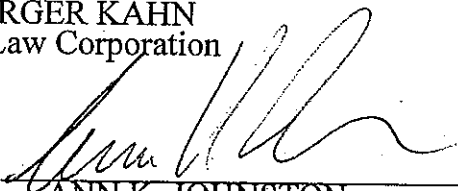
2. On July 15, 2008, Plaintiff's Summons and Complaint were personally served on Hartford Casualty Insurance Company.

3. This action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. section 1332, and is one which may be removed to this Court by Hartford pursuant to 28 U.S.C. section 1441(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs. Complaint, 8:2. Plaintiff's Complaint alleges three causes of action: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) declaratory relief.

4. Plaintiff's Complaint alleges that Plaintiff is a citizen of the State of California. Complaint, 1:19. Plaintiff's Complaint alleges Hartford is a New Jersey corporation. Complaint: 1:23. Hartford was, at the time of the filing of this action, and still is, a corporation incorporated under the laws of the State of Indiana, with its principal place of business in the State of Connecticut.

DATED: August 11, 2008

BERGER KAHN  
A Law Corporation

By:   
ANN K. JOHNSTON  
Attorneys for Defendant  
Hartford Casualty Insurance Company

BERGER KAHN  
A Law Corporation  
7200 Redwood Blvd., Suite 325  
Novato, CA 94945

# AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am employed by Berger Kahn, A Law Corporation, whose business address is: 7200 Redwood Boulevard, Suite 325, Novato, CA 94945 ("the firm").

On August 11, 2008, I served the within document(s) described as: **NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. § 141(b)** on the interested parties in this action by placing true copy(ies) thereof enclosed in sealed envelope(s) addressed as follows:

Robert H. Staley, Esq.  
Epstein, Englert, Staley & Coffey  
425 California Street, 17<sup>th</sup> Floor  
San Francisco, CA 94104  
Tel: 415-398-2200  
Fax: 415-398-6938

☐ **BY MAIL**(C.C.P. § 1013(a))—I deposited such envelope(s) for processing in the mail room in our offices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Novato, California, in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **BY FAX** (C.C.P. § 1013(a), (e); CRC 2008)—by transmitting said document(s) by electronic facsimile at approximately .m. at 7200 Redwood Boulevard, Suite 325, Novato, California 94945, to the respective facsimile number(s) of the party(ies) as stated on the attached mailing list. The facsimile machine I used complied with California Rules of Court, rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, rule 2008(e), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

☒ **BY OVERNIGHT MAIL**(C.C.P. § 1013(c))—I placed said envelope(s) for collection by \*\*\***Federal Express/Golden State Overnight**\*\*\*, following ordinary business practices, at the business offices of Berger Kahn for collection and processing of correspondence with said overnight mail service, and said envelope(s) will be deposited with said overnight mail service on said date in the ordinary course of business.

I am "readily familiar" with the firm's practice of collection and processing of correspondence for service with said overnight mail service. It is deposited with said overnight mail service on that same day in the ordinary course of business. I am aware that, on motion of a party served, service is presumed invalid if the said overnight delivery service cancellation date or delivery date on the overnight delivery service slip is more than one day after the date of deposit with said overnight delivery service contained in this affidavit.

☐ **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED**—I served the within document(s) by placing ☐ the original ☐ true copy(ies) thereof enclosed in sealed envelope(s) with Certified Mail, Return Receipt Requested, postage

thereon fully prepaid and by causing such envelope(s) to be deposited in the mail at 7200 Redwood Boulevard, Suite 325, Novato, California 94945.

I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing by Certified Mail, Return Receipt Requested, with the United States Postal Service: it is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postal meter date on the envelope(s) is more than one day after the date of deposit for mailing contained in this affidavit.



**BY PERSONAL SERVICE**(C.C.P. § 1011(a))—I delivered such envelope(s) by hand to the offices of the addressee(s).



(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 11, 2008, at Novato, California.

  
MARLA TOM

BERGER KAHN  
A Law Corporation  
7200 Redwood Blvd., Suite 325  
Novato, CA 94945

# EXHIBIT A

1 ROBERT H. STALEY (SBN # 122101)  
2 EPSTEIN, ENGLERT, STALEY & COFFEY  
3 425 California Street, 17<sup>th</sup> Floor  
4 San Francisco, CA 94104  
5 Tel (415) 398-2200  
6 Fax (415) 398-6938

7 Attorneys for ROMAN KOROLEV

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN

10 ROMAN KOROLEV,

11 Plaintiff,

12 v.

13 HARTFORD CASUALTY INSURANCE  
14 COMPANY and DOES 1 through 50, inclusive,

15 Defendant.

LAW DEPARTMENT

JUL 17 08

RECEIVED

FILED

JUL 14 2008

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: J. Dale, Deputy

Case No. CV 083119

COMPLAINT FOR BAD FAITH; BREACH  
OF CONTRACT; BREACH OF THE  
IMPLIED COVENANT OF GOOD FAITH  
AND FAIR DEALING; and  
DECLARATORY RELIEF

BY FAX

16 Plaintiff ROMAN KOROLEV hereby alleges as follows:

17 GENERAL ALLEGATIONS

18 1. ROMAN KOROLEV ("KOROLEV") is, and at all times relevant hereto was, a  
19 citizen of California, engaged in the business of furniture restoration in the County of Marin. At  
20 all times relevant hereto, KOROLEV operated a furniture restoration business at 15-17 Joseph  
21 Court, San Rafael, California (the "Premises").

22 2. Defendant HARTFORD CASUALTY INSURANCE COMPANY  
23 ("HARTFORD") is, and at all times relevant hereto was, a New Jersey Corporation, licensed to  
24 do business as an insurer in the State of California and doing business in the County of Marin.

25 3. William John Thompson is, and at all times relevant hereto was a California  
26 resident, licensed to do business as an insurance broker in the State of California and doing  
27 business in the State of California and County of Marin as Northern California Silver Creek  
28 Insurance Agency ("Silver Creek").

1           4. Defendants DOES 1-50, inclusive, are the fictitious names of those defendants  
2 whose true names are unknown to KOROLEV and whose true capacities, whether as individuals,  
3 corporations, partnerships, joint ventures, and/or associations are also unknown to KOROLEV  
4 and when such true names are ascertained, KOROLEV will amend this Complaint by inserting  
5 said true names in place of said fictitious names in accordance with Code of Civil Procedure.

6           5. KOROLEV is informed and believes and thereon alleges that at all relevant times  
7 herein each defendant was the principal, agent, joint venturer, partner, parent, subsidiary,  
8 employee, or director of each other defendant and acted within the course and scope of that  
9 relationship.

10          6. On or about May 10, 2006, KOROLEV purchased, through Silver Creek,  
11 HARTFORD Policy No. 57 SBM BMZ9253, ("the Policy"), a "Business Owners Policy" which  
12 KOROLEV is informed and believes consists of a Commercial General Liability policy and a  
13 Property Policy that includes business interruption coverage. KOROLEV purchased the Policy to  
14 insure his furniture restoration business operations and the Premises. The policy period inception  
15 on May 10, 2006 and is renewable on an annual basis.

16          7. On or about April 5, 2006, KOROLEV paid the initial premium for the Policy in  
17 accordance with the instructions of Silver Creek by faxing to Silver Creek a check made payable  
18 to Silver Creek in the amount of \$650.00.

19          8. After tendering the premium, KOROLEV received a Certificate of Insurance for  
20 the Policy, a true and correct copy of which is attached hereto as Exhibit A and incorporated  
21 herein by reference. KOROLEV's only copy of the Policy itself was destroyed in the fire at the  
22 Premises that is the loss underlying this suit. Despite multiple written requests, HARTFORD has  
23 not provided KOROLEV with another copy the Policy.

24          9. On or about April 10, 2007, KOROLEV attempted to renew, and as far as he was  
25 aware, did renew the Policy for another year by faxing a check for the premium to Silver Creek  
26 in the same manner as when he paid for the initial premium.

27          10. Prior to March 1, 2008, HARTFORD never notified KOROLEV that the renewal  
28



1 payment had not been received by HARTFORD, that the Policy would be cancelled unless  
2 payment was received, or that that Policy had been cancelled for lack of payment. At all times  
3 prior to the fire which is the subject of suit, KOROLEV was led to believe that the Policy was in  
4 full force and effect.

5 11. On or about March 1, 2008, a fire broke out at the Premises, injuring KOROLEV,  
6 destroying his business equipment, furnishings, and other possessions, destroying numerous  
7 pieces of furniture belonging to his clients, and damaging the Premises. KOROLEV is informed  
8 and believes that the fire also damaged other leased spaces and disrupted other business  
9 operations located within the building.

10 12. Immediately following the fire, and while in the hospital being treated for burns  
11 suffered in the fire, KOROLEV asked Silver Creek to provide him evidence of his insurance  
12 coverage for the fire and Silver Creek sent him a Certificate of Insurance purportedly confirming  
13 his insurance coverage, a true and correct copy of which is attached hereto as Exhibit B.  
14 KOROLEV then tendered the fire claim to HARTFORD and Silver Creek. The tender was  
15 initially made orally and subsequently in writing.

16 13. In response to his oral and written tenders, HARTFORD orally informed  
17 KOROLEV that the Policy had been cancelled as a result of non-payment of the premium.  
18 However, HARTFORD never provided KOROLEV with a formal written denial of coverage,  
19 and never advised KOROLEV of his right to contest HARTFORD's denial of coverage.

20 14. After tendering his claim, KOROLEV received a notice of claim from Farmers  
21 Insurance dated April 22, 2008, relating to damages it allegedly paid to neighboring business  
22 Eduardo's Restaurant in the amount of \$67,682.59 as a result of the fire. KOROLEV also  
23 received a notice of claim from Allied Insurance dated March 24, 2008, relating to damages it  
24 allegedly paid to KOROLEV's landlords Donald and Brenda MacLean in the amount of  
25 \$71,543.16 as a result of the fire. Without admitting the truth of any claims contained therein,  
26 KOROLEV timely and in writing tendered these claims to HARTFORD under the Policy. True  
27 and correct copies of the Farmers Insurance and Allied Insurance claim notices are attached  
28



1 hereto as Exhibits C & D, respectively, and are incorporated herein by reference.

2 15. As of the date of filing, HARTFORD has failed to acknowledge receipt of the  
3 claim notices from Allied and Farmers, and has likewise failed to acknowledge its contractual  
4 responsibility to indemnify KOROLEV for the alleged losses.

5 16. On March 25, 2008, KOROLEV, through his counsel, wrote to HARTFORD and  
6 requested a copy of the Policy, as well as a copy of HARTFORD' file relating to the Policy,  
7 including all correspondence related to the Policy. In the same letter of March 25, 2008,  
8 KOROLEV advised HARTFORD that KOROLEV had never received a notice of Policy  
9 cancellation from HARTFORD and asked HARTFORD to review the Policy records and verify  
10 the status of the Policy. As of the date of filing, HARTFORD has failed to comply with this  
11 request.

12 17. Receiving no response, KOROLEV, through his counsel, renewed his request for  
13 a copy of the Policy and the related file in writing a second time on May 8, 2008, a third time on  
14 June 2, 2008, a fourth time on June 10, 2008, and a fifth time on June 23, 2008. As of the date of  
15 filing, HARTFORD has failed to acknowledge or comply with any of KOROLEV's multiple  
16 written requests for a copy of the Policy and the related file.

17 18. On March 25, 2008, KOROLEV, through his counsel, wrote to Silver Creek and  
18 requested a copy of its file related to the Policy.

19 19. On or about April 20, 2008, KOROLEV received a copy of Silver Creek's file  
20 related to his Policy. The file does not contain a notice of cancellation mailed to KOROLEV. It  
21 does contain a June 12, 2007 letter from HARTFORD to "ROMAN KOROLVE" and the  
22 recipient's address is identified as "675 N FIRST ST SUITE 690, SAN JOSE, CA 95112." The  
23 letter indicates that it was carbon copied to "ART HOLLINGSWORTH INS SVCS/PHS." No  
24 other recipients or addressees are identified in that letter. The letter states that HARTFORD had  
25 "initiated cancellation for nonpayment of premium" of KOROLEV's policy, and advised that,  
26 "because we believe you may want to maintain this important protection, we are offering to  
27 reinstate your coverage as of the cancellation effective date if we receive your premium payment  
28

1 of \$410.00 before 07/02/07. If we receive your payment before this date, we will rescind this  
 2 cancellation, reinstate your policy and continue your coverage without interruption." A true and  
 3 correct copy of the HARTFORD letter dated June 12, 2007 and obtained from the Silver Creek  
 4 file is attached hereto as Exhibit E and is incorporated herein by reference.

5 20. Enclosed with the June 12, 2007 HARTFORD letter is a document entitled  
 6 "NOTICE OF CANCELLATION (California)" which identifies the "NAME AND ADDRESS  
 7 OF INSURED" as "ROMAN KOROLVE, 675 N FIRST ST SUITE 690, SAN JOSE, CA 95112  
 8 and identifies the "NAME AND ADDRESS OF AGENT/BROKER" as "ART  
 9 HOLLINGSWORTH INS SVCS/PHS, 101 GOLF COURSE DRIVE STE 200, ROHNERT  
 10 PARK CA 94928." A true and correct copy of the "NOTICE OF CANCELLATION  
 11 (California)" is attached hereto as Exhibit F and is incorporated herein by reference.

12 21. At all times relevant hereto, KOROLEV's address was 15-17 Joseph Court, San  
 13 Rafael, California, not 675 N First St., Suite 690, San Jose, CA. KOROLEV is informed and  
 14 believes that at all times relevant hereto that "675 N FIRST ST SUITE 690, SAN JOSE, CA  
 15 95112" was and is the mail address for Silver Creek.

16 22. KOROLEV never received or had any knowledge of the June 12, 2007  
 17 HARTFORD letter or the enclosed Notice of Cancellation, which HARTFORD addressed to two  
 18 separate insurance brokers but not to him. Consequently, HARTFORD failed to notify  
 19 KOROLEV of its intent to cancel the Policy.

20 23. On May 8, 2008, KOROLEV, through his counsel, notified HARTFORD that its  
 21 June 12, 2007 letter with the enclosed Notice of Cancellation was sent to the wrong address and  
 22 never received by KOROLEV, and sent HARTFORD a copy of the Notice of Cancellation with  
 23 the wrong addresses. The fax confirmation sheet notes that the fax was properly transmitted.  
 24 HARTFORD never acknowledged receipt of the fax or responded. When KOROLEV, through  
 25 counsel, followed up for a response, HARTFORD denied having received the May 8, 2008 fax.  
 26 On May 15, 2008, KOROLEV, through his counsel, again sent HARTFORD the improperly-  
 27 addressed Notice of Cancellation -- this time by email. Again, HARTFORD failed to respond or  
 28

1 acknowledge receipt of the email.

2 24. On May 20, 2008, KOROLEV, through his counsel, asked HARTFORD to  
3 confirm receipt of the email of May 15, 2008. On May 20, 2008, HARTFORD claims adjuster  
4 Karen Lee acknowledged receipt of the May 15, 2008 email and wrote, "I will get back to you in  
5 regards to the status by early next week." Neither Karen Lee nor any other HARTFORD  
6 representative responded to KOROLEV's counsel the following week.

7 25. On June 2, 2008, KOROLEV, through his counsel, notified HARTFORD in  
8 writing that 1) it had failed to provide any response or any status update as it had promised; and  
9 2) that a lawsuit against HARTFORD would be filed after June 6, 2008 unless HARTFORD  
10 either agreed to provide coverage to KOROLEV under the Policy or explain in writing why it  
11 was not obligated to do so. HARTFORD failed to respond.

12 26. On June 10, 2008, KOROLEV, through his counsel, again notified HARTFORD  
13 in writing that it had failed to either provide coverage under the Policy or explain why it was not  
14 obligated to do so, and asked for an update in writing by June 11, 2008, as to all actions  
15 HARTFORD has taken to investigate this matter and what remained to be done to reach a  
16 coverage determination, as well as an update on the status of the previous unanswered requests.  
17 HARTFORD failed to respond.

18 27. Despite KOROLEV's prompt tender and diligent efforts to have HARTFORD  
19 verify his entitlement to coverage under his Policy and California law, HARTFORD has  
20 wrongfully and unreasonably 1) orally denied coverage for the loss; 2) failed to advise  
21 KOROLEV of his legal rights to challenge its initial oral denial of coverage; 3) wrongfully and  
22 unreasonably failed to promptly investigate KOROLEV's reasonable assertion that he was not  
23 provided the Notice of Cancellation; 4) failed and refused to acknowledge responsibility to  
24 resolve the claims asserted against KOROLEV by Farmers Insurance and Allied Insurance; 5)  
25 failed and refused to provide KOROLEV a copy of his own Policy despite multiple written  
26 requests; 6) failed to acknowledge and respond reasonably promptly to KOROLEV's  
27 communications; and 7) failed to acknowledge KOROLEV's entitlement to coverage under the  
28

1 Policy after it became clear that KOROLEV was not sent the Notice of Cancellation or given  
2 advance notice that HARTFORD had not received his premium payment.

3 I.

4 FIRST CAUSE OF ACTION

5 (Breach of Written Contract as Against HARTFORD)

6 28. KOROLEV hereby incorporates by reference the allegations contained in the  
7 proceeding paragraphs as though fully set forth herein.

8 29. At all times herein mentioned HARTFORD, orally and in writing, in the Policy  
9 and through advertising and sales materials, brochures, pamphlets and booklets, represented that  
10 claims submitted under said insurance policies would be indemnified.

11 30. At all times herein mentioned the Policy was issued for good and valuable  
12 consideration and said Policy was kept in full force and effect by reason of the fact that  
13 KOROLEV paid the initial premium on said Policy, HARTFORD accepted payment of the  
14 premium, and HARTFORD did not provide notice of cancellation of the Policy in compliance  
15 with Insurance Code section 677.2.

16 31. KOROLEV has performed all conditions, covenants and promises required of him  
17 in accordance with the terms and conditions of the Policy.

18 32. HARTFORD was timely notified, orally and in writing, of the losses incurred by  
19 KOROLEV and the claims being asserted by third parties, and was requested to indemnify  
20 KOROLEV for his losses and the claims of damage by the third parties.

21 33. At all times herein mentioned HARTFORD was, pursuant to the terms of the  
22 Policy and California law, obligated to honor the aforementioned tenders of indemnity by  
23 KOROLEV.

24 34. HARTFORD materially breached its contractual obligations under the Policy by  
25 its actions and failure to act as alleged above.

26 35. As a direct and proximate result of HARTFORD's material breach of the Policy,  
27 KOROLEV has been damaged and continues to be damaged in an amount equal to the benefits  
28

1 due under the Policy, together with interest thereon, all in an amount to be proven at trial but in  
 2 no event less than \$150,000, as well as other costs and expenses, including attorney's fees  
 3 incurred because of the necessity of bringing this legal action to recover the benefits due under  
 4 the Policy. WHEREFORE, KOROLEV prays for judgment as set forth below.

5 II.

6 **SECOND CAUSE OF ACTION**  
 7 **(Bad Faith Breach of the Implied Covenant of Good Faith and Fair**  
 8 **Dealing as against HARTFORD)**

9 36. KOROLEV hereby incorporates by reference the allegations contained in the  
 10 proceeding paragraphs as though fully set forth herein.

11 37. The Policy includes an implied covenant of good faith and fair dealing whereby  
 12 HARTFORD impliedly covenanted that it would deal with KOROLEV fairly and honestly and  
 13 do nothing to impair, interfere with, hinder or potentially injure his rights to receive the benefits  
 14 of the Policy.

15 38. HARTFORD breached the covenant of good faith and fair dealing owed to  
 16 KOROLEV by its conduct, including, but not limited to, the following:

17 a. Unreasonably and consciously refusing to honor KOROLEV's tender of  
 18 the losses under the Policy, knowing that the failure to properly honor KOROLEV's  
 19 tender was contrary to established law and the terms of the Policy;

20 b. Unreasonably and consciously refusing to honor KOROLEV's request for  
 21 indemnity once it became clear that KOROLEV's right to the benefits under the Policy  
 22 was and is valid;

23 c. Unreasonably and consciously failing to advise KOROLEV of his legal  
 24 right to challenge its initial denial of coverage, knowing that its failure to do so was  
 25 contrary to established law and the terms of the Policy;

26 d. Unreasonably and consciously refusing to provide KOROLEV a copy of  
 27 his own Policy, despite multiple requests, knowing that its failure to do so was contrary  
 28 to established law and the terms of the Policy.

1 e. Unreasonably and consciously failing to properly and timely investigate  
2 KOROLEV's claim carefully, honestly, fairly and with due care;

3 f. Refusing to proceed with an adequate and prompt investigation of the  
4 liability claims asserted against KOROLEV by Allied Insurance and Farmers Insurance;

5 g. Unreasonably and consciously failing to acknowledge and respond  
6 reasonably and promptly to communications and requests for documents and information  
7 from KOROLEV.

8 h. Unreasonably and consciously failing to process diligently and honor  
9 KOROLEV's request for indemnity, thereby causing KOROLEV to incur detriment to  
10 his business interests and subjecting KOROLEV to the exposure to liability claims  
11 asserted by Allied Insurance and Farmers Insurance; and

12 39. As a direct and proximate result of HARTFORD's bad faith breach of the implied  
13 covenant of good faith and fair dealing KOROLEV has been damaged in an amount to be  
14 determined at trial. KOROLEV'S damages include, without limitation, the amount of the lost  
15 benefits under the Policy, the injury to KOROLEV's business interests, the emotional distress he  
16 has endured as a result of HARTFORD's invalid denial of coverage and unconscionable delay in  
17 evaluating and responding to evidence establishing his coverage, and the attorneys' fees and  
18 other costs incurred because of the necessity of bringing this action to recover the benefits due  
19 under the Policy.

20 40. HARTFORD's failure to honor KOROLEV's tender related to the fire was  
21 without just or reasonable cause, and HARTFORD knew or should have known that its actions  
22 were contrary to California law and the terms and conditions of the Policy.

23 41. In breaching the covenant of good faith and fair dealing, HARTFORD acted  
24 willfully, fraudulently, maliciously, oppressively, with conscious disregard of KOROLEV's  
25 rights and with the intent to vex, annoy, harass and injure KOROLEV and, therefore,  
26 KOROLEV is entitled to recover for exemplary damages in an amount sufficient to deter similar  
27 conduct in the future by HARTFORD.



1 WHEREFORE, KOROLEV prays for judgment as set forth below.

2 III.

3 THIRD CAUSE OF ACTION

4 (Declaratory Relief as Against HARTFORD)

5 42. KOROLEV hereby incorporates by reference the allegations contained in the  
6 proceeding paragraphs as though fully set forth herein.

7 43. An actual controversy exists between KOROLEV and HARTFORD concerning  
8 whether the Policy was properly cancelled in accordance with California law, and KOROLEV's  
9 rights to coverage under the Policy for the losses and claims arising out of the fire at the  
10 Premises. KOROLEV contends that the Policy was not cancelled, that it remained in force and  
11 effect at the time of the fire, that it provided coverage for the claims arising out of the fire,  
12 including the claims asserted by Farmers Insurance and Allied Insurance, as well as business  
13 interruption coverage for KOROLEV, and that KOROLEV is entitled to all benefits due under  
14 the terms and conditions of the Policy. On the other hand, HARTFORD contends that the Policy  
15 was cancelled and that KOROLEV is not entitled to coverage of any kind under the Policy.

16 44. KOROLEV desires a judicial determination of his rights and obligations,  
17 including 1) a determination that the Policy was not cancelled and remained in force and effect at  
18 the time of the fire; 2) a determination of the scope of coverage under the Policy, including the  
19 fact that it includes coverage for business interruption; 3) and a determination that the Policy  
20 does in fact provide coverage for the losses and claims arising out of the fire at the Premises,  
21 including without limitation the claims asserted by Farmers Insurance and Allied Insurance are  
22 covered under the Policy.

23 45. A judicial declaration is necessary and appropriate at this time under the  
24 circumstances in order that KOROLEV may ascertain his rights to obtain coverage under the  
25 Policy for the claims and losses arising out of the fire at the Premises.



1 WHEREFORE, KOROLEV prays for judgment as set forth below.

2  
3 PRAYER

4 KOROLEV prays for judgment against HARTFORD as follows:

- 5 1. For compensatory damages according to proof;
- 6 2. For attorney's fees and costs incurred in the instant action;
- 7 3. For interest to be calculated from the date of the breach of contract;
- 8 4. For exemplary damages in a sum sufficient to deter similar misconduct in the
- 9 future;
- 10 5. For a judicial declaration of the parties' rights and obligations, including 1) a
- 11 determination that the Policy was not cancelled and remained in force and effect at the time of
- 12 the fire; 2) a determination of the scope of coverage under the Policy, including the fact that it
- 13 includes coverage for business interruption; 3) and a determination that the Policy does in fact
- 14 provide coverage for the losses and claims arising out of the fire at the Premises, including
- 15 without limitation the claims asserted by Farmers Insurance and Allied Insurance.
- 16 6. For such other and further relief from all defendants as the Court may deem just
- 17 and proper.

18  
19 DATED: July 14, 2008

EPSTEIN, ENGLERT, STALEY & COFFEY,  
A Professional Corporation

20  
21 By: 

22 Robert H. Staley  
Attorneys for Plaintiff  
23 ROMAN KOROLEV  
24  
25  
26  
27  
28

**Exhibit A**

**ACORD CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
05/10/2006**PRODUCER**Silver Creek Insurance  
675 N. First St., Suite 690  
San Jose, CA 95112  
408-998-7300

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

ROMAN A. KOROLEV

17 JOSEPH CT  
SAN RAFAEL, CA 94903  
415-479-3664**INSURERS AFFORDING COVERAGE****NAIC#**

INSURER A: HARTFORD CASUALTY

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

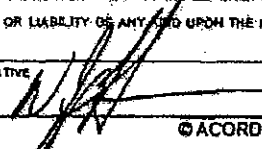
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

REA LTD	COOL LTD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY	57 SBM BZ9253	05/10/06	05/10/07	EACH OCCURRENCE \$1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$300,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$10,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$1,000,000
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC				GENERAL AGGREGATE \$2,000,000
						PRODUCTS - COM/PR AGG \$2,000,000
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (EA accident) \$
		ANY AUTO				BOO INJURY (Per person) \$
		ALL OWNED AUTOS				BOO INJURY (Per accident) \$
		SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		HIRED AUTOS				
		NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$
						AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
						\$
		DEDUCTIBLE				\$
		RETENTION \$				\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER
		and employees in the workplace or off-site (worker excluded)				E.L. EACH ACCIDENT \$
		If not described under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
		OTHER				E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE 

**Exhibit B**

Mar 04 08 12:45p

4089987373

p.1

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/04/2008
<b>PRODUCER</b> Silver Creek Insurance 675 N. First St., Suite 690 San Jose, CA 95112 408-998-7300		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURERS AFFORDING COVERAGE</b> INSURER A: HARTFORD CASUALTY INSURER B: INSURER C: INSURER D: INSURER E:		
<b>INSURED</b> ROMAN A. KOROLEV 17 JOSEPH CT SAN RAFAEL, CA 94903 415-479-3664		<b>NAIC#</b>

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

POLICY LINE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR	57 SBA AV0415	05/10/07	05/10/08	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$300,000 NEDEXP (ANY ONE PERSON) \$10,000 PERSONAL AND M. JURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPOR AGG \$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> TO EACH <input type="checkbox"/> LOC				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA ACCIDENT) \$ BODILY INJURY (Per Person) \$ BODILY INJURY (Per Accident) \$ PROPERTY DAMAGE (Per Accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	EXCESS UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	EMPLOYERS COMPENSATION AND EMPLOYERS LIABILITY <input type="checkbox"/> ANY EMPLOYER OR PARTIAL EMPLOYER <input type="checkbox"/> SPECIAL PROVISIONS BELOW OTHER				MC STAT. TORT LIMITS \$ EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

DONALD MACLEAN AND BRENDA MACLEAN ARE LISTED AS ADDITIONAL INSURED AND CERTIFICATE HOLDERS ON THE ABOVE POLICY.

## CERTIFICATE HOLDER

DONALD MACLEAN  
 BRENDA MACLEAN  
 17 JOSEPH COURT  
 SAN RAFAEL, CA 94903

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER SHALL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2004/08)

©ACORD CORPORATION 1998

**Exhibit C**

Apr 30 08 09:04a User1

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**FARMERS**

National Document Center  
 P.O. Box 268992  
 Oklahoma City, OK 73126-8992  
[claimsdocuments@farmersinsurance.com](mailto:claimsdocuments@farmersinsurance.com)  
 Fax: 877-217-1329

04/22/2008  
 Roman Korolev  
 10 Professional Center Parkway #5  
 San Rafael, CA 94903

Re: Our Insured: - Eduardos Restaurant  
 Loss Date: 03/01/2008  
 Claim Number: 099 SUB 1011678128-1  
 Total Amount Owed: \$67,682.59

Dear Roman Korolev:

A review of the facts of the loss indicated that our insured is entitled to recover damages from you. Therefore, we have the right to make claim for these damages on our insured's behalf.

This letter is to notify you of our subrogation rights and to advise you that no one has the authority to give you a release for our interest except a representative of this company. If you carried liability insurance to protect you for such losses, we shall present our claim to your company. Please complete the following information and return to us:

Insurance Carrier: \_\_\_\_\_  
 Policy Number: \_\_\_\_\_ Claim Number: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

If you did not carry insurance, we will look to you for payment of our claim. Please be aware that no partial payment that is less than the full amount claimed herein will be considered in any way an acceptance of benefits, a notation of accord and satisfaction of this claim without an express written release of our claim executed by an individual who is a member of our subrogation department. Therefore, our legal rights to enforce collection on the remaining amount of claim shall not be waived or estopped due to a partial payment by you or someone acting on your behalf.

Sincerely,  
 Truck Insurance Exchange

*Robin Butler*

Robin Butler  
 Commercial Property Claims Representative  
 512-533-8834  
[robin.butler@farmersinsurance.com](mailto:robin.butler@farmersinsurance.com)



**Exhibit D**

Apr 02 08 12:33p User:1

Kordew

4154793664

p.1

**Allied  
Insurance**a Nationwide\* company  
On Your Side®Nationwide Mutual Insurance Company  
Pacific Coast Regional Office  
3820 109th St Dept 5577  
Des Moines, IA 50391-5577  
Phone: 800-552-2437/Fax: 800-742-1341

MARCH 24, 2008

25878  
WHITECAP INSURANCE SERVICES  
SAN RAFAEL CA 94901-1838

Return to:

ROMAN A KORLEY

10 PROFESSIONAL CENTER PKWY #5  
SAN RAFAEL, CA 94503MAIL DISTRIBUTION DEPT.  
P O BOX 10405  
DES MOINES IA 50306-9475  
|||

fold here

Claim No.: 84P20236

Our Insured: DONALD MACLEAN

BRENDA MACLEAN

Date of Loss: 03/01/08

Location of Loss: 4200 REDWOOD HWY, SAN RAFAEL, CA

The insured named above has their insurance through this company for the loss they incurred on the above date. The insurance policy subrogation provision allows us to collect payments we make to our insured from the individual at fault. Our investigation indicates that the damages resulted from A FIRE IN YOUR UNIT

The total amount of damages for this claim is SPENDING. Our company has made payment to our insured in the amount of \$71543.16. Our insured has paid \$500.00, which represents their deductible under the provisions of their policy.

Please return this letter to our office with the statement completed regarding your insurance coverage. For your convenience, we have furnished a postage-paid envelope to assist you in returning this form.

If you have insurance, we will communicate with your insurance carrier for repayment. If you do not have insurance, please contact this office to make arrangements for repayment.

If you have any questions, please call using the toll-free number listed above. Thank you for your cooperation and assistance.

FOREST DEJONG PRO 707-864-8184

Claim Department, ext.

Nationwide Mutual Insurance Company

**STATEMENT OF INSURANCE COVERAGE**☐ I do not carry any insurance which may apply☐ My Insurance Company is:

Policy No: \_\_\_\_\_

Agent Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Phone No: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit E

The Hartford  
Commercial Billing  
P.O. Box 620  
New Hartford NY 13413-6200



57SBMBZ9253  
ROMAN KOROLVE  
675 N FIRST ST SUITE 690  
SAN JOSE, CA 95112

June 12, 2007

RE: Account Number: 57 11661406  
Policy Number: 57SBMBZ9253

The Hartford has initiated cancellation for nonpayment of premium of Direct Bill Account Number 57 11661406.

However, because we believe you may want to maintain this important protection, we are offering to reinstate your coverage as of the cancellation effective date if we receive your premium payment of \$410.00 before 07/02/07. If we receive your payment before this date, we will rescind this cancellation, reinstate your policy and continue your coverage without interruption.

By choosing the convenience and security of automatic electronic payment withdrawals you can avoid worrying about checks, postage, late payments, late fees and even a lapse in your valuable insurance coverage. Please call our toll free number 1-866-467-8730 Monday through Friday to make payment and sign up for the Repetitive Electronic Payment Program (EFT) or mail payment to:

THE HARTFORD  
P.O. BOX 5556  
HARTFORD, CT 06102-5556

Please allow for sufficient mailing time for us to receive the payment by the date shown above.

cc: ART HOLLINGSWORTH INS SVCS/PHS

**Exhibit F**

# **NOTICE OF CANCELLATION** (California)

NAME AND ADDRESS OF INSURANCE COMPANY  
HARTFORD CASUALTY INSURANCE COMPANY  
HARTFORD PLAZA  
HARTFORD, CT 06115

NAME AND ADDRESS OF INSURED  
ROMAN KOROLVE  
575 N FIRST ST SUITE 600  
SAN JOSE, CA 95112

KIND OF POLICY:	Business Owners	
POLICY/APPLICATION/BINDER NO.:	57SBMBZ9253	
EFFECTIVE DATE OF NOTICE:	07/03/07	12:01 A.M.
	(HOUR STANDARD TIME AT THE ADDRESS OF THE INSURED)	
DATE OF MAILING:	June 12, 2007	
NAME AND ADDRESS OF AGENT/BROKER:	ART HOLLINGSWORTH INS SVCS/PHS 101 GOLF COURSE DRIVE STE 200 ROHNERT PARK CA 94928	

(Applicable item marked "X")

## **Cancellation**

- ☒ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that your insurance will cease at and from the hour and date mentioned above.
- ☒ Reason for cancellation: Nonpayment of premium
- See the "Important Notices" section below for other information that may apply.

## **Important Notices**

- ☐ **Automobile Assigned Risk Plan Information:** Pursuant to Section 652 of the Insurance Code you are hereby notified that:
1. The California Automobile Assigned Risk Plan provides a means by which applicants for automobile bodily injury and property damage liability insurance may be assigned to an insurer authorized to transact liability insurance.
  2. If you are unable to procure such insurance through ordinary methods and you are in good faith eligible for such insurance in accordance with the standards of the Plan, it is possible for you to obtain it through the Plan.
  3. Application forms for insurance through the Plan may be obtained from and submitted through (a) any licensed insurance agent or broker or (b) the Plan itself at P.O. Box 7917, San Francisco, CA 94120-7917.
- ☒ **California FAIR Plan Association:** You have been notified herewith that this Company will no longer be carrying your insurance. If you wish to replace your policy you should make an effort to obtain insurance through another company in the voluntary market. If you have difficulty in procuring replacement coverage in the voluntary market, you possibly may obtain basic fire insurance coverages through the California Fair Plan Association. Insurance through the Association is available only in certain areas of the state. For further information or assistance in obtaining basic property insurance through the FAIR Plan, please contact your agent or broker or the Plan at 1-213-487-0111 or 1-800-339-4099 (in California only).

*Alice E. Smith*

Authorized Representative

**EXHIBIT B**



**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**Hartford Casualty Insurance Company and DOES 1 through 50, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**Roman Korojev**

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

**JUL 14 2008**

**KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

*By: J. Dale, Deputy*

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

**Superior Court of California, County of Marin  
3501 Civic Center Drive, San Rafael, CA 94903**

CASE NUMBER: **CV 083419**  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

**Robert H. Staley, (Bar # 122101) Epstein, Engfert, Staley & Coffey  
425 California Street, Suite 1700, San Francisco, CA 94104**

Phone: (415) 398-2200

Fax: (415) 398-6938

DATE:

(Fecha)

**JUL 14 2008**

**KIM TURNER**

Clerk, by

(Secretario)

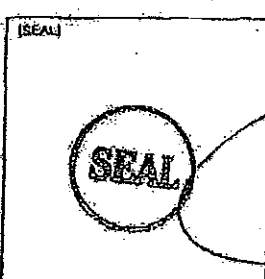
**J. DALE**

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)



**NOTICE TO THE PERSON SERVED: You are served.**

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

**Hartford Casualty Insurance Company**

3. ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

# EXHIBIT C

**FILED**

## SUPERIOR COURT OF CALIFORNIA

County of Marin

P.O. Box 4988

San Rafael, CA 94913-4988

JUL 14 2008

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: J. Dale, Deputy

PLAINTIFF: Roman KorolevCASE NO. CV083419

vs.

DEFENDANT: Hartford Casualty Insurance  
CompanyNOTICE OF CASE  
MANAGEMENT CONFERENCE  
(CIVIL)

This case is subject to the Trial Court Delay Reduction Act, Government Code § 68600 et seq., and Civil Rules of the Uniform Local Rules of the Marin County Superior Court (hereafter MCSC Civil Rules).

Pursuant to California Rules of Court 3.734, this case is assigned to Judge Durfee  
Department 1. This assignment is for all purposes.

MCSC Civil Rule 1.18 and CRC 3.110(b) and 3.221(c) requires that the Summons and Complaint, a copy of this notice, a blank Case Management Conference Statement form, and an ADR information package be served and that Proof of Service be filed within 60 days of the filing date of this Complaint. CRC 3.110(d) requires that defendants file responsive pleadings within 30 days of service, unless the parties stipulate to an extension of not more than 15 days.

## 1. IT IS ORDERED that the parties/counsel to this action shall:

- a. Comply with the filing and service deadlines in MCSC Civil Rules 1.18 and CRC 3.110, or APPEAR IN PERSON at the Order to Show Cause hearing on the dates set forth below:

Hearing on Failure to File Proof of Service 9, 23, 08 9:00 A.M.

Hearing on Failure to Answer 10, 23, 08 9:00 A.M.

b. Appear for a Case Management Conference on 12, 4, 08 9:00 A.M.

2. Telephonic appearance at Case Management Conference may be available by contacting COURT CALL, an independent vendor, not less than 5 court days before the hearing date. Parties may make arrangements by calling (888) 882-6878. This service is subject to charges by the vendor.
3. You must be familiar with the case and be fully prepared to discuss the suitability of the case for binding or non-binding arbitration, mediation, or neutral case evaluation. Counsel must discuss ADR options with their clients prior to attending the CMC and should be prepared to discuss with the court their authority to participate in ADR.
4. Case Management Conference Statements must be filed and served on all parties, including the Court, at least 15 calendar days before the CMC. (A \$49.00 sanction will be charged for late filing of a statement.)

Case Management Statement must be filed by 11, 17, 08

5. All Law and Motion matters will be heard on the calendar of the assigned Judge. Tentative Rulings may be obtained by calling (415) 473-7545 from 2:00 p.m. to 4:30 p.m. the court day preceding the scheduled hearing.

# EXHIBIT D

**FILED**

**AUG 08 2008**

**KIM TURNER**  
Court Executive Officer  
**MARIN COUNTY SUPERIOR COURT**  
By: S. Petersen, Deputy

1 ANN K. JOHNSTON, ESQ. (SBN 145022)  
2 BERGER KAHN  
3 A Law Corporation  
4 7200 Redwood Boulevard, Suite 325  
5 Novato, CA 94945  
6 Tel: (415) 899-1770 • Fax: (415) 899-1769

7 Attorneys for Defendant  
8 HARTFORD CASUALTY INSURANCE COMPANY

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF MARIN**

11 ROMAN KOROLEV,

12 Plaintiffs,

13 vs.

14 HARTFORD CASUALTY  
15 INSURANCE COMPANY and DOES  
16 1 through 50, inclusive,

17 Defendants.

CASE NO. CV 083419

**ANSWER TO COMPLAINT**

DATE ACTION FILED: 7/14/2008  
TRIAL DATE: Not Set

**BY FAX**

18  
19 COMES NOW Defendant Hartford Casualty Insurance Company (hereinafter  
20 referred to as "Defendant"), and answers Plaintiff's Complaint, on behalf of itself and  
21 itself alone as follows:

22 **GENERAL DENIAL**

23 Pursuant to the provisions of Code of Civil Procedure section 431.30, Defendant  
24 denies, generally and specifically, each and every allegation of the Complaint and all  
25 causes of action contained therein. Defendant further denies that Plaintiff has sustained  
26 any injury, damage, or loss by reason of any alleged act or omission of Defendant or any  
27 of its employees or representatives.

28 ///

1 For separate and distinct defenses, Defendant alleges as follows:

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State Sufficient Facts – First Cause of Action)**

4 The first cause of action alleging breach of contract fails to state sufficient facts to  
5 constitute a cause of action against Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Failure to State Sufficient Facts – Second Cause of Action)**

8 The second cause of action alleging breach of the implied covenant of good faith  
9 and fair dealing fails to state sufficient facts to constitute a cause of action Defendant.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **(Failure to State Sufficient Facts – Third Cause of Action)**

12 The third cause of action alleging declaratory relief fails state sufficient facts to  
13 constitute a cause of action against Defendant.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 **(Failure to State Sufficient Facts – Complaint)**

16 The Complaint fails to state sufficient facts to constitute a cause of action against  
17 Defendant.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 **(Laches)**

20 Defendant is informed and believes and thereon alleges that the Complaint and  
21 each and every purported cause of action therein are barred by the doctrine of laches.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 Defendant is informed and believes and thereon alleges that the Complaint and  
25 each and every purported cause of action therein are barred by the doctrine of waiver.

26 ///

27 ///

28 ///

**SEVENTH AFFIRMATIVE DEFENSE****(Estoppel)**

Defendant is informed and believes and thereon alleges that the Complaint and each and every purported cause of action therein are barred by the doctrine of estoppel.

**EIGHTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

Defendant is informed and believes and thereon alleges that the Complaint and each and every purported cause of action therein are barred by the doctrine of unclean hands.

**NINTH AFFIRMATIVE DEFENSE****(Limitations Periods)**

Defendant is informed and believes and thereon alleges that Plaintiff's causes of action, and each of them, against Defendant are barred by applicable limitations, including but not limited to the provisions of Code of Civil Procedure sections 337, 338, 339 and 343, and the limitation period in the alleged insurance policy.

**TENTH AFFIRMATIVE DEFENSE****(Comparative Fault/Negligence)**

Defendant is informed and believes and thereon alleges that any loss, injury, damage or detriment suffered by Plaintiff was proximately caused by and/or contributed to by the acts, omissions and/or negligence of Plaintiff, Plaintiff's agents and/or third parties other than Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE****(Failure to Mitigate)**

Defendant is informed and believes and thereon alleges Plaintiff and Plaintiff's agents failed to act reasonably to minimize, avoid or otherwise mitigate any loss, injury, damage, or detriment suffered by Plaintiff and, as a result, Plaintiff is barred or otherwise prevented from recovering damages from Defendant.

///



**TWELFTH AFFIRMATIVE DEFENSE**

**(Failure of Consideration/Failure to Perform)**

Plaintiff's breach of contract claim fails for Plaintiff's failure of consideration or failure to perform.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Breach)**

Defendant is informed and believes and thereon alleges that Plaintiff has breached the conditions of the insurance policy that is the subject of Plaintiff's Complaint. Plaintiff is thereby precluded from recovering the damages sought in the Complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Privilege)**

Hartford's conduct in investigating, evaluating and seeking settlement of Plaintiff's subject claim for insurance benefits was privileged.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Attorney's Fees Recovery Barred)**

Plaintiff's claims for attorneys' fees are barred by California Code of Civil Procedure Section 1021 (compensation of attorneys).

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Uncertain Contract Damages Barred)**

Defendant is informed and believes and thereon alleges that Plaintiff's purported claims for damages for breach of contract are not clearly ascertainable in both their nature and origin and are barred by California Civil Code Section 3301 (damages must be certain).

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Failure to State Facts – Punitive Damages)**

Defendant alleges that the Complaint fails to state facts sufficient to warrant the imposition of punitive damages against this Defendant.

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**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Pre-Judgment Interest Unavailable)**

As pled, Plaintiff's Complaint does not provide a statutory, legal or factual basis for the recovery of pre-judgment interest

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Reservation of Right to Amend)**

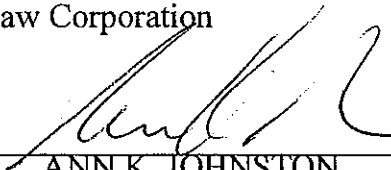
Defendant reserves the right to amend this answer, to assert additional affirmative defenses and to supplement, alter or change this answer and defenses upon revelation of more definitive facts by Plaintiff and/or upon discovery and investigation in this matter.

WHEREFORE, Defendant HARTFORD CASUALTY INSURANCE COMPANY prays for judgment as follows:

1. That Plaintiff take nothing by way of his Complaint;
2. For costs of suit incurred herein; and
3. For such other and further relief as the Court may deem just and proper.

DATED: August 8, 2008

BERGER KAHN  
A Law Corporation

By:   
ANN K. JOHNSTON  
Attorneys for Defendant  
Hartford Casualty Insurance Company

BERGER KAHN  
A Law Corporation  
7200 Redwood Blvd., Suite 325  
Novato, CA 94945

1 **AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE BY MAIL**2 **(Code Civ. Proc. §§ 1013a(3) and 2015.5)**3  
4 STATE OF CALIFORNIA )  
5 COUNTY OF MARIN ) ss.6 I, the undersigned, am employed in the County of Marin, State of California. I am  
7 over the age of 18 and not a party to the within action.8 I am employed by Berger Kahn, A Law Corporation, whose business address is:  
9 7200 Redwood Boulevard, Suite 325, Novato, CA 94945 (the "firm").10 On August 8, 2008, I served the foregoing document(s) described as ANSWER  
11 TO COMPLAINT on the interested parties in this action by placing ☐ the original ☐  
true copy(ies) thereof, enclosed in sealed envelope(s) with postage thereon fully prepaid  
and by causing such envelope(s) to be deposited in the mail at 7200 Redwood Boulevard,  
Suite 325, Novato, California 94945, addressed as follows:12 Robert H. Staley, Esq.  
13 Epstein, Englert, Staley & Coffey  
14 425 California Street, 17<sup>th</sup> Floor  
San Francisco, CA 94104  
Tel: 415-398-2200  
Fax: 415-398-693815 I am readily familiar with the firm's practice of collecting and processing  
16 correspondence for mailing with the United States Postal Service: it is deposited with the  
17 United States Postal Service on that same day in the ordinary course of business. I am  
18 aware that on motion of a party served, service is presumed invalid if the postal  
cancellation date or postal meter date on the envelope is more than one day after the date  
of deposit for mailing contained in this affidavit.19 I declare under penalty of perjury under the laws of the State of California that the  
20 above is true and correct.

21 Executed on August 8, 2008, at Novato, California.

22  
23   
24 MARLA TOM